



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/169029

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 26, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the La Crosse County Dept. of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 4, 2015, by telephone.

The issue for determination is whether the agency correctly denied FS for petitioner's daughter because she already received FS on another case.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

|  
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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
La Crosse County Dept. of Human Services  
P.O. Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner resides with her daughter, for whom she has primary physical placement. On September 1, 2015, petitioner applied for FS for herself and her daughter.
3. Petitioner's daughter already was included on an open case for the child's father. After petitioner's application the agency issued petitioner maximum FS for a one-person household,

excluding her daughter. The agency asked petitioner for verification of the living situation, and on September 18 she provided a copy of a court order showing her to have primary placement.

4. The agency immediately updated the case to take the child off the father's FS case and add her to petitioner's case. However, because the action was taken after cut-off for October FS, petitioner's daughter was not added to petitioner's case until November 1, 2015. She remained on her father's FS case for October.

### **DISCUSSION**

Petitioner appealed the denial of FS for her daughter on petitioner's case for September and October. She rightly points out that her daughter never should have been on the father's case because he has far less than 50% of placement.

7 C.F.R. §272.4(e)(1) provides as follows: "Each State agency shall establish a system to assure that no individual participates more than once in a month, in more than one jurisdiction, or in more than one household within the State in the Food Stamp Program." As a result the FS Handbook, Appendix 3.4.1 provides that a person cannot be a member of more than one food unit in the same month, with an exception of residents of shelters for battered persons.

While by rights petitioner should have received FS for her daughter in September and October, this office cannot ignore a federal regulation. As a result I cannot order the agency to issue FS to petitioner on her daughter's behalf because her daughter already received FS on another case. The only remedy is to move the child to the correct household as soon as possible, which already occurred.

### **CONCLUSIONS OF LAW**

The county correctly left petitioner's daughter off of petitioner's FS in September and October, 2015 because she already was issued FS on her father's FS case.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 6th day of November, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 6, 2015.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability